

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to Investigate  
Implementing a Decoupling Mechanism for  
Hawaiian Electric Company, Inc., Hawaii Electric  
Light Company, Inc., and Maui Electric Company,  
Limited

DOCKET NO. 2008-0274

PUBLIC UTILITIES  
COMMISSION

2008 NOV 20 P 3:00

FILED

**HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT  
COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S  
MEMORANDUM IN RESPONSE TO  
THE MOTION TO INTERVENE OF HAIKU DESIGN AND ANALYSIS**

**AND**

**CERTIFICATE OF SERVICE**

GOODSILL ANDERSON QUINN & STIFEL  
A LIMITED LIABILITY LAW PARTNERSHIP LLP

THOMAS W. WILLIAMS, JR.  
PETER Y. KIKUTA  
DAMON L. SCHMIDT  
Alii Place, Suite 1800  
1099 Alakea Street  
Honolulu, Hawaii 96813  
Telephone: (808) 547-5600  
Facsimile: (808) 547-5880

Attorneys for  
HAWAIIAN ELECTRIC COMPANY, INC.,  
HAWAII ELECTRIC LIGHT COMPANY, INC., and  
MAUI ELECTRIC COMPANY, LIMITED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of

PUBLIC UTILITIES COMMISSION

DOCKET NO. 2008-0274

Instituting a Proceeding to Investigate  
Implementing a Decoupling Mechanism for  
Hawaiian Electric Company, Inc., Hawaii  
Electric Light Company, Inc., and Maui  
Electric Company, Limited

**HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT  
COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S  
MEMORANDUM IN RESPONSE TO  
THE MOTION TO INTERVENE OF HAIKU DESIGN AND ANALYSIS**

HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT  
COMPANY, INC. ("HELCO"), and MAUI ELECTRIC COMPANY, LIMITED ("MECO")<sup>1</sup>  
respectfully submit this Memorandum in Response to the Motion to Intervene of Haiku Design  
and Analysis ("Haiku"), dated November 10, 2008 ("Motion").<sup>2</sup>

Haiku has expertise, knowledge and experience in, and has contributed to past  
Commission dockets addressing the issue of decoupling, most recently in the Companies' energy

<sup>1</sup> HECO, HELCO and MECO are collectively referred to herein as the "HECO Companies" or "Companies".

<sup>2</sup> The Motion was served upon HECO by mail on November 10, 2008. Hawaii Administrative Rules ("HAR") § 6-61-41(c) states: "An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion . . . ." HAR § 6-61-22 states: ". . . When the prescribed time is less than seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation . . . ." HAR § 6-61-21(e) states: "Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party and the notice or document is served upon the party by mail, two days shall be added to the prescribed period." Seven days from November 10, 2008, excluding Saturdays, Sundays and holidays, is Thursday, November 20, 2008. Therefore, this Memorandum in Response to the Motion is timely filed.

efficiency/demand-side management (“EE/DSM”) docket, Docket No. 05-0069. Haiku has also contributed to other regulatory dockets such as the Companies’ integrated resource planning (“IRP”) dockets.

In light of this expertise, knowledge and experience, but also in recognition of the procedural schedule set forth in the Order Initiating Proceeding, filed October 24, 2008 in this docket (“Initiating Order”), Haiku should be granted participant status. If the Commission grants participant status to Haiku, then the Commission should also determine the appropriate scope and extent of such participation.

With respect to intervention, Haiku has not demonstrated that it should be permitted to intervene as a full party to this docket. For example, Haiku’s stated desire to remain “knowledgeable, apprised of events and active in the field of utility regulation” is not a property, financial or other interest sufficient to justify Haiku’s being permitted to intervene in this docket.

Moreover, in light of (1) the Consumer Advocate’s ongoing statutory obligation to represent all consumers; and (2) the fact that the October 20, 2008 *Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and Hawaiian Electric Companies* (“HCEI Agreement”) contains an agreement “in principle” regarding decoupling, the HECO Companies do not agree with Haiku’s contention that the HCEI Agreement has rendered the Consumer Advocate incapable of representing consumers on the issue of revenue decoupling.

As a result, rather than granting Haiku’s Motion to Intervene, the Commission should grant Haiku participant status pursuant to HAR § 6-61-56.

## **I. DISCUSSION**

### **A. BACKGROUND**

Motions to intervene are governed by the Rules of Practice and Procedure Before the

Public Utilities Commission, Title 6, Chapter 61, HAR (the "Commission's Rules of Practice and Procedure"), which pertain to intervention as a party as well as participation without intervention. Haiku has labeled its Motion as a "Motion to Intervene" filed pursuant to HAR § 6-61-55. Under HAR § 6-61-55(a), "A person may make an application to intervene and become a party by filing a timely written motion . . . stating the facts and reasons for the proposed intervention and the position and interest of the applicant."

The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a proceeding before the Commission "is not a matter of right but is a matter resting within the sound discretion of the Commission." In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should be admitted as a party (or as a participant) in a proceeding. HAR § 6-61-55(d) specifically states: "Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993).

In addition, the Commission needs to "secure the just, speedy and inexpensive determination of every proceeding," which is the purpose of the Commission's Rules of Practice and Procedure as stated in HAR § 6-61-1. However, the "just, speedy and inexpensive determination" of a proceeding cannot be accomplished if the Commission admits every movant as a party.

## **B. LIMITED PARTICIPATION WITHOUT INTERVENTION**

The Commission in the past has denied intervenor status, but granted participation status pursuant to HAR § 6-61-56, and allowed the limited participation of persons seeking intervention on specific issues when such persons' interests may not be adequately represented by existing parties, or when such persons may have special knowledge or expertise.

HAR § 6-61-56(a) provides:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

Haiku has expertise, knowledge and experience in, and has contributed to past Commission dockets addressing the issue of decoupling, as well as to other regulatory dockets such as the Companies' IRP dockets. As noted in the Motion:

[Haiku's] principal, Carl Freedman was the first person to explain and propose adoption of a decoupling mechanism to the Commission (1991) and testified on behalf of the Consumer Advocate in support of implementing revenue decoupling in several later dockets. Most recently, Carl Freedman presented testimony regarding the merits of revenue decoupling and designed and proposed a decoupling mechanism for Hawaiian Electric Company, Inc. (HECO) as a consultant for Rocky Mountain Institute as an expert witness in Docket No. 05-0069 (the "Energy Efficiency Docket").<sup>3</sup>

In light of this expertise, knowledge and experience, but also in recognition of the procedural schedule set forth in the Initiating Order (e.g., the 60-day deadline for a joint proposal on decoupling; and the Commission's goal of issuing a decision approximately in the summer of 2009),<sup>4</sup> Haiku should be granted participant status.

<sup>3</sup> Motion, para. 6.

<sup>4</sup> The expeditious schedule for this proceeding requires, among other things that:

- "Within forty-five days from the date of this Order, the Parties (and intervenors and participants, if any) shall file a stipulated procedural order setting forth the issues, procedures, and schedule to govern this proceeding. The Parties' stipulated procedural schedule should, to the extent

If the Commission grants participant status to Haiku in this docket, then as the Commission has done in other dockets, the Commission should also determine the appropriate scope and extent of such participation. For example, in HELCO's 2006 test year rate case,<sup>5</sup> the Commission denied the Rocky Mountain Institute's ("RMI") Motion to Intervene because RMI's stated experience and expertise were not reasonably pertinent to HELCO's request for a general rate increase. The Commission nevertheless granted RMI "limited participant status, pursuant to H.A.R. § 6-61-56, restricted to the issues set forth in its Motion to Intervene, i.e., tiered rate pricing, time of use pricing, energy cost adjustment charge, net energy metering and the renewable energy and energy efficiency program for affordable homes." In addition, the Commission stated that "unless the commission decides otherwise at a future date, RMI's participation is limited to responding to any discovery requests, filing a statement of position, and responding to questions at any evidentiary hearing."<sup>6</sup>

The Commission added:

RMI is cautioned that it must follow all applicable rules of the commission, and that the commission will reconsider RMI's participation in this docket if, at any time, the commission determines that it is unreasonably broadening the pertinent issues raised in this docket or is unduly delaying the proceeding.<sup>7</sup>

Similarly, in HELCO's 2000 test year rate case,<sup>8</sup> the Commission denied the attempt of Citizen Utilities Company d/b/a The Gas Company ("TGC") to intervene, but granted TGC

---

possible, allow the commission to complete its deliberations and issue a decision by the time an interim decision will be issued in Docket No. 2008-0083 (approximately the summer of 2009)" (Initiating Order at 10) (emphasis added); and

- "The HECO Companies and the Consumer Advocate shall submit to the commission a joint proposal on decoupling that addresses all of the factors identified in their Agreement within sixty days of the date of this Order" (Initiating Order at 9) (emphasis added).

<sup>5</sup> Re Hawaii Electric Light Co., Docket No. 05-0315.

<sup>6</sup> See Order No. 22663 (August 1, 2006) at 8-9.

<sup>7</sup> Id. at 9.

<sup>8</sup> Re Hawaiian Electric Light Co., Docket No. 99-0207.

participant status, limited to HELCO's proposed Standby Rider A.<sup>9</sup>

The Commission stated:

the commission believes that TGC's limited input as to the effects of Rider A on self-generators that use gas as a fuel source may prove useful. Therefore, consistent with HAR § 6-61-56(a), the commission will grant TGC participant status, limited to this narrow issue;<sup>10</sup> provided that TGC's participation does not in any manner duplicate the efforts of the Consumer Advocate in this regard. If, at any time during the commission's review, it is concluded that TGC's efforts duplicate those of the Consumer Advocate's, the commission will reconsider TGC's further participation in this docket.<sup>11</sup>

The Commission issued similar orders in Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989);<sup>12</sup> and Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992).<sup>13</sup>

---

<sup>9</sup> See Order No. 17532 (February 10, 2000).

<sup>10</sup> In a footnote, the Commission added:

Unless ordered otherwise, TGC's participation will extend no further. We also make clear that as part of its on-going review of HELCO's request for a general rate increase, the commission, on its own motion or otherwise, may later decide to separate Rider A from this rate proceeding. If so, TGC's participation in this rate proceeding will terminate. Finally, we note that in two dockets currently pending before the commission, Hawaiian Electric Company, Inc., seeks to implement a standby charge on an interim (Docket No. 99-0105) and permanent basis (Docket No. 96-0356).

<sup>11</sup> Id. at 5-6 (footnote 6 omitted).

<sup>12</sup> In Order No. 10399, the Commission denied the amended application to intervene of Puna Community Council, Inc. ("PCC") in a HELCO rate case, but granted PCC participation status, subject to the conditions that (1) PCC's participant status would be "limited to the issue of the specific impact of HELCO's proposed rate structure on the ratepayers of the Puna district who are in the lower income brackets", and (2) "PCC shall participate in the proceedings and present relevant documents and materials and testimony of witnesses through the Consumer Advocate." Order No. 10399 at 5-6. PCC had sought to intervene on the basis that HELCO's proposal to increase its rates would seriously impact the ratepayers of the Puna district. PCC's only attempt to distinguish itself from the general public was the allegation that HELCO's proposed rate increase would seriously impact Puna ratepayers because most of them were in the lower income brackets and tend to use less power. PCC also argued that the Consumer Advocate would not adequately represent the interests of the Puna district ratepayers.

<sup>13</sup> In Decision and Order No. 11668, the Commission denied intervention, but allowed limited participation to seven low-income residents through its attorneys, the Legal Aid Society of Hawaii (collectively "Legal Aid"), in a MECO rate case. The low-income residents, through Legal Aid, sought to intervene on the alleged basis that they would not be adequately represented by the Consumer Advocate. Decision and Order No. 11668 at 3. In addition, Legal Aid informed the Commission that it could further the development of the record as it had access to certain experts and resources not available to any other party. The Consumer Advocate supported Legal Aid's involvement in the proceeding. The Commission denied Legal Aid's Motion to Intervene, and found that the Consumer Advocate would protect Legal Aid's interest. However, the Commission was impressed by Legal Aid's statement of expertise, knowledge and experience, and thus granted Legal Aid participant status limited to the issue of the specific impact of MECO's proposed rate structure and rate design on ratepayers in the lower income brackets.

In addition, the Commission has limited a participant's participation by the condition that the participant's assent to any settlement agreement between all or any of the parties was not required. For example, in the Commission's Net Energy Metering docket, Docket No. 2008-0069 the Commission limited the participation of Zero Emissions Leasing LLC as follows:

To the extent settlement discussions occur collectively amongst the Parties, the Participant shall receive notice and have the opportunity to participate in such settlement discussions, provided that the assent of the Participant shall not be required to any settlement reached by all or any of the Parties.<sup>14</sup>

**C. MOTION TO INTERVENE**

**1. Haiku's Desire to Remain "Knowledgeable, Apprised of Events and Active in the Field of Utility Regulation" Is Not a Financial, Property, or Other Interest Sufficient to Justify Haiku's Intervention as a Party.**

HAR § 6-61-55(b)(2) requires that a motion to intervene make reference to "[t]he nature and extent of the applicant's property, financial, and other interest in the pending matter[.]" (Emphasis added.) Other than its concern for "the public's interests generally" (addressed infra), Haiku's only other stated interest in this proceeding pertains to Haiku's desire to remain "knowledgeable, apprised of events and active in the field of utility regulation." Haiku's Motion has not demonstrated a direct material interest, either financial, property or otherwise, that warrants granting Haiku intervention in this proceeding.<sup>15</sup>

Moreover, this docket will be a matter of public record such that Haiku will have the

<sup>14</sup> See the Stipulated Regulatory Schedule attached as Exhibit A to Order No. 22884, issued September 21, 2006 in Docket No. 2006-0084 at 2.

<sup>15</sup> Although not binding on the Commission, an excerpt from CORPUS JURIS SECONDUM discussing the types of interests justifying intervention as a party is instructive as to what "other" interests should be covered under HAR § 6-61-55(b)(2):

The right or interest which will authorize a third person to intervene must be of a direct and immediate character, so that the intervenor will either gain or lose by the direct legal operation of the judgment. Moreover, the interest must be closely connected with the object in dispute and founded on some right, claim, or lien, either legal or equitable. A person has a direct interest justifying intervention in litigation where a judgment in the action of itself adds to or detracts from his or her legal rights without reference to the rights and duties not involved in the litigation. The interest is not sufficient if it is indirect and contingent, indirect and remote, indirect, remote, and conjectural, conditional, consequential, or collateral.

67A C.J.S. Parties § 105 (2004).



opportunity to fully review it in furtherance of its desire to remain “knowledgeable, apprised of events and active in the field of utility regulation,” irrespective of whether or not Haiku is admitted as a full party to this proceeding.

2. **Haiku’s Stated Interest in Serving “The Public’s Interests Generally” is a Matter of General Public Interest that can be Adequately Represented by the Consumer Advocate.**

HAR § 6-61-55(b)(5) requires that motions to intervene make reference to “[t]he extent to which the applicant’s interest will not be represented by existing parties[.]” Although the Initiating Order named the Consumer Advocate as a party to this docket,<sup>16</sup> Haiku maintains that: “Each of the existing parties is bound by the terms of the [HCEI Agreement] and is therefore unable to represent any interests that are not consistent with the specific terms of the agreement.” Motion, para. 5. The HECO Companies disagree, as the HCEI Agreement does not relieve the Consumer Advocate of its duty to advocate on behalf of all consumers.

Regardless of the HCEI Agreement, the Consumer Advocate remains “statutorily required to represent, protect, and advance the interest of all consumers.” HRS § 269-51 (emphasis added). Thus, the Consumer Advocate is required to ensure that the decoupling mechanism being investigated in this docket is in the interest of all consumers. Given the Consumer Advocate’s resources, including the expertise, knowledge and experience it has gained as a statutorily-named party to countless utility ratemaking proceedings, this is a task to which the Consumer Advocate is well-suited.

Revenue decoupling is addressed in Section 28 of the HCEI Agreement, which states: “The parties agree in principle that it is appropriate to adopt a decoupling mechanism that closely tracks the mechanisms in place for several California electric utilities . . . .” HCEI Agreement at

---

<sup>16</sup> See Initiating Order at 9.

32-33 (emphasis added).

The agreement “in principle” set forth in Section 28 of the HCEI Agreement generally does not spell out any specific, substantive details regarding a decoupling mechanism. For example, Section 28 does not identify any of the “several California electric utilities” whose decoupling mechanisms it might be appropriate for the HECO Companies’ mechanism to track or what cost tracking indices would be used. Similarly, Section 28 specifically passes on the issue of whether such mechanism would be adjusted on a quarterly, semi-annual, or annual basis. Accordingly, even if Section 28 were something more than an agreement in principle (which it is not), the Consumer Advocate would nevertheless be entitled to form its own opinions on decoupling and independently advocate on behalf of all consumers – as it is statutorily required to do.<sup>17</sup>

In light of (1) the Consumer Advocate’s ongoing statutory obligation to represent all consumers; and (2) the fact that the HCEI Agreement contains nothing more than an agreement “in principle” regarding decoupling, the HECO Companies do not agree with Haiku’s argument that the HCEI Agreement has rendered the Consumer Advocate incapable of representing consumers on the issue of revenue decoupling.<sup>18</sup>

---

<sup>17</sup> There are a number of safeguard mechanisms within the HCEI Agreement to ensure that once developed, the decoupling mechanism ultimately implemented by the HECO Companies is reasonable and in the interest of consumers. For example, Section 28 provides: “The parties agree that the decoupling mechanism that will be implemented will be subject to review and approval by the PUC.” HCEI Agreement § 28.2. Moreover, the agreement “in principle” states that the “Consumer Advocate may also file a request to review the impact of the decoupling mechanism.” *Id.*, § 28.5. Likewise, “The Commission may review the decoupling mechanism at any time if it determines that the mechanism is not operating in the interests of the ratepayers.” *Id.*, § 28.4. Further, “The Commission may unilaterally discontinue the decoupling mechanism if it finds that the public interest requires such action.” *Id.*, § 28.6.

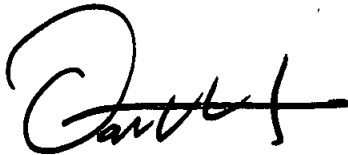
<sup>18</sup> A finding that the Consumer Advocate is unable to adequately represent the interest of consumers in this docket could impact other Commission dockets that result from the agreements included in the HCEI Agreement. One of the criteria concerning motions to intervene is that movants demonstrate the extent to which their interests will not be represented by existing parties (i.e., the Consumer Advocate).

The HCEI Agreement contains a compilation of general goals and commitments regarding numerous clean energy-related issues including but not limited to: developing the use wind, solar and biofuel energy; displacement of fossil-fueled energy; feed-in tariffs; energy efficiency; demand response; advanced metering infrastructure; greening transportation; seawater air conditioning; distributed generation and energy storage; net energy metering; transmission planning; and smart grid development.

## II. CONCLUSION

Based on the foregoing, rather than granting Haiku's Motion to Intervene, the Commission should grant Haiku participant status. If the Commission grants participant status to Haiku in this docket, then the Commission should also determine the scope and extent of such participation.

DATED: Honolulu, Hawaii, November 20, 2008.



---

THOMAS W. WILLIAMS, JR.  
PETER Y. KIKUTA  
DAMON L. SCHMIDT

Attorneys for  
HAWAIIAN ELECTRIC COMPANY, INC.,  
HAWAII ELECTRIC LIGHT COMPANY, INC., and  
MAUI ELECTRIC COMPANY, LIMITED

---

Many of these issues will be addressed in new dockets before the Commission, and it is foreseeable that motions to intervene or to participate without intervention will be filed in those dockets.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S MEMORANDUM IN RESPONSE TO THE MOTION TO INTERVENE OF HAIKU DESIGN AND ANALYSIS, together with this CERTIFICATE OF SERVICE, as indicated below by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

Hand Delivery	U.S. Mail	
X		Catherine Awakuni, Executive Director Department of Commerce and Consumer Affairs Division of Consumer Advocacy 335 Merchant Street, Room 326 Honolulu, Hawaii 96813
	X	Randall J. Hee, P.E. President and CEO Kauai Island Utility Cooperative 4463 Pahe'e Street, Ste. 1 Lihue, HI 96766-2000
	X	Timothy Blume Michael Yamane Kauai Island Utility Cooperative 4463 Pahe'e Street, Ste. 1 Lihue, HI 96766
X		Kent D. Morihara, Esq. Kris N. Nakagawa, Esq. Rhonda L. Ching, Esq. Morihara Lau & Fong LLP 841 Bishop Street, Ste. 400 Honolulu, HI 96813

	X	Carl Freedman Haiku Design & Analysis 4234 Hana Hwy. Haiku, HI 96708
--	---	---

DATED: Honolulu, Hawaii, November 20, 2008.




---

THOMAS W. WILLIAMS, JR.  
PETER Y. KIKUTA  
DAMON L. SCHMIDT

Attorneys for  
HAWAIIAN ELECTRIC COMPANY, INC.  
HAWAII ELECTRIC LIGHT COMPANY, INC., and  
MAUI ELECTRIC COMPANY, LIMITED